IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 620 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAFULCHANRDA B. PANDYA

Versus

STATE OF GUJARAT

Appearance:

MS BANNA S DUTTA for appellant

No one has appeared on behalf of the respondent.

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 20/04/2001

ORAL JUDGEMENT

This plaintiff's First Appeal is directed against the City Civil Court's order dated 31st March 1981 whereby the plaintiff's suit has been partly decreed in the following terms:

"The plaintiff's suit is partly decreed as under.

It is hereby declared that the defendant is not entitled to recover the amount of Rs.3257.37 out of the amount of Rs.7425.87 as demanded in notice dated 31-7-77 issued by the Director of Agriculture, Ahmedabad and the defendant is hereby permanently restrained from recovering the amount to the extent of Rs.3257.37 from the plaintiff. It is hereby clarified that the defendant shall be entitled to recover Rs.4168.50 with interest at the rate of 4 per cent p.a. from 25-7-77 till the date of payment and not with interest at the rate of 6 per cent as demanded in the notice. The plaintiff's suit for the refund of the amount of Rs.3500 is dismissed.

In the circumstances of the case, there shall be no order as to costs."

2. The plaintiff was serving as a Technical Assistant to the Principal, Agricultural College, Junagadh. In the Year 1965, he was deputed for post-graduate training in M.Sc. (Agriculture) with effect from the academic session commencing from July, 1965 vide Order dated 25th August, 1965. He was further directed to execute the bonds in forms nos.1 and 2 according to which he was bound to serve the State Government for a period of five years after returning from the training in default of which he was liable to make good all the expenses by the State Government on the plaintiff during the period of training with interest at the rate of 4% p.a. The plaintiff executed two bonds in forms nos.1 and 2 on or about 13th October, 1965. He had hardly completed the training for the period from 8th September, 1965 to 9th June, 1966 and was directed by the Principal College of Agriculture, Junagadh to take charge as Assistant Professor of Animal Science at Junagadh College as per the order dated 8th June, 1966 and in pursuance to that order, the plaintiff joined his duty as a Assistant Professor on 9th June, 1966 and worked as such upto 17th April, 1967. The case of the plaintiff was that during the period he was required to serve at the cost of his training he could not be said to be on deputation as he was rendering actual physical service to the Government as Assistant Professor of Animal Science at Junagadh. The period of deputation that is to say the training was to be completed on 9th August, 1987 i.e. to say the said period was from 9th August, 1967 to 18th January, 1970 on which date he was relieved upon his resignation. The defendant - State of Gujarat was acting on the terms of the bonds given in the case that the

plaintiff was required to serve for five years and he had resigned even before the period of five years. The Government was entitled to sum of Rs.14,948.48 paisa from the plaintiff because at the time of relieving the plaintiff a fresh bond of Rs.10,000/- with two sureties had been executed by the plaintiff himself and it is against this claim raised by the State Government that the present suit was filed by the plaintiff, appellant herein. The total period of deputation of the training was 24 months, the same was cut short by 19 months and 9 days, rendering proportionate deduction in the stipulated service of 60 months and it would be reduced to 35 months. The plaintiff also challenged the correctness of calculations made by the State Government in the face of the resolution under which concession was sought to be given to the plaintiff and it has come with the calculation that he would be liable to pay Rs.3405.75 paisa with interest at the rate of 4% per annum from 25th July, 1977 the date of Government resolution.

3. On behalf of the defendant - State government, a reply was filed and the claim of the plaintiff was sought to be traversed on the facts and grounds mentioned in the written statement at Exh.8.

4. On the basis the pleadings of the parties, the following issues were framed by the trial Court and the findings were recorded against each of the issues as mentioned hereunder :-

(1) Is the suit not maintainable at law?	- The suit is maintenable at law.
(2) Is the suit barred by Law of Limitation?	-In the negative.
(3) Is the suit barred by principle of estoppel as alleged in paragraph 4 of the written statement?	-In the affirmative
(4) Is it shown that the bonds in question are illegal, void and not enforceable at the law?	-In the negative.
(5) Does the plaintiff prove that Rs.3500 were forcibly recovered from the plaintiff by the defendant?	-Does not survive.

(6) Does the plaintiff prove that he has complied with the term of the bonds in question in view of the contention in para 10 of the plaint? -Does not survive.

(7) Does not plaintiff prove that the defendant failed to per-form the deft.'s part of the contract contained in the bonds in question? -Does not survive.

(8) To what relief or reliefs is the plaintiff entitled? -As per order below

(9) What order and decree? -As per order below.

5. I have gone through the impugned judgment and reasoning and the findings arrived at as above. I find from the contents of para-18 to 27 of the impugned judgment of the Trial Court that the Trial Court has rightly held that the part of the claim in the suit that relates to the issue nos.5, 6 and 7 would be barred by the principle of estoppel and I also agree with the reasons given in para - 29 to 32. The trial Court has given adequate reasons in support of the findings of each of the issues based on evidence and after entertaining into the calculation of all the claims as rightly come to the conclusion that the defendant was entitled to recover a sum of Rs.14,948.48 paisa only with interest at the rate of 4% p.a. from 25th July, 1977 till the date of payment. That suit has been partly decreed on proper appreciation of evidence as was tendered before the trial Court and the plaintiff's claim for refunded of Rs.3,500/- has bee rightly dismissed.

4. I find that the findings have been correctly arrived at by the Civil Court on proper appreciation of evidence and I also find that the decree as has been passed for payment of a sum of Rs.4168.50 is in accordance with proper appreciation of evidence. There is no substance in this Appeal and the same is hereby dismissed with no order as to costs.

20th April 2001 (M.R. Calla, J.)

Sreeram.